As between these witnesses it must be taken that the learned Trial Judge accepted the evidence of Mr. Stratton Brown.

But, in my opinion, the surrounding circumstances, the chronology of the events, and the other documentary evidence (apart from Exhibit C itself) all tend to support this finding of the learned Trial Judge.

And again examination of the agreement itself certainly *prima facie* creates the impression that there was in the contemplation of the parties nothing except the Service Agreement and possible matters arising from it.

I am therefore of opinion that on all the evidence given before him there was ample material to support this finding of fact by the learned Trial Judge.

Much of the argument for the Appellant was devoted to the proper construction of the agreement itself and in particular to the effect of the recitals in controlling the general operative words in the agreement. Many cases were cited on this question. They are:—

Payler v. *Homersham* (1815).
Lampson v. *Corke* (1822).
Collier v. *Squire* (1827).
Lindo v. *Lindo* (1839).
Hawkins v. *Jackson* (1850).
Bisset v. *Burgess* (1856).
Lyall v. *Edwards* (1861).
Jenner v. *Jenner* (1866).
London & South Western Railway v. *Blackmore* (1870).
Turner v. *Turner* (1880).
Danly v. *Couts* (1885).
Exparte Dawes (1886).
In Re Perkins (1898).

I have examined these cases with great care. These cases are all determined—however arrived at—whether from construction of the instrument alone or together with other relevant evidence—they are all determined by a finding as to what the intention of the parties was in executing the particular instrument.

In my opinion this appeal should be dismissed with costs.

Application dismissed.

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JOHORE REPORT

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

December 12, 1937.

S. L. S. L. LETCHUMANAN CHETTY .....**Plaintiff.**

v.

HAN HIU FONG.....**Defendant.**

[MUAR CIVIL SUIT No. 20 of 1937]

The Land Enactment, 1910, Schedule P. (Section 62)—Charge—Payment of interest after due date—Interest by way of damages—The Usurious Loans Enactment, S.3 (vii).

By a Charge made in statutory form on the 18th September 1931, the defendant covenanted to pay the plaintiff a certain sum of money, together with interest at a specified rate, on the 18th September 1932. He charged his land with such principal and interest "for the better securing to the said Chargee the payment in manner aforesaid of the principal sum and interest." There was no covenant to pay interest, in default of payment of principal, after 18th September 1932.

Held, following *K. Arumugam* v. *J. K. R. Leonard*, 5 M.L.J. 252, that interest was not payable after the date specified in the charge for repayment of the principal, but that on a proper construction of Section 73 of the F.M.S. Contract Enactment, in the light of illustration (n), interest is payable as damages for withholding payment of the principal beyond the agreed date.

Held also, that in determining the rate of interest to be paid as damages, regard should be had to the provisions of Section 3 (vii) of the Usurious Loans Enactment.

TRIAL OF SUIT.

The facts appear from the judgment below.

Mitra for the Plaintiff.

Cameron for the Defendant.

Cur. Ad. Vult.

MILLS, J.—On the 18th September, 1931, the defendant borrowed the sum of $4,000 from the plaintiff: the defendant contracted to repay that sum on the 18th September, 1932, and to pay interest at the rate of $18 by the $100 in the year, by equal instalments of $60 on the 18th day of every month. For the better securing to the plaintiff the payment in manner aforesaid of the principal sum and interest, the defendant charged the land comprised in Johore Grant No. 6985. A copy of the charge is attached to this judgment. The defendant has not repaid any of the principal and has paid only $340 as interest.

In the present suit, the plaintiff prays judgment for

(a) the principal sum of $4,000,

(b) $380, being interest due and unpaid up to the 18th September, 1932,

(c) compensation or damages, being assessed at the rate of 18% per annum or other proper rate from the 19th September, 1932, to the date of judgment.

The defendant admits his liability to repay the sum of $4,000 and to pay interest up to the 18th September, 1932, but denies liability to pay interest after that date and maintains that the plaintiff is not entitled to damages for breach of the contract to repay the principal.

The first point for decision is whether the plaintiff is, by virtue of the contract embodied in the charge, entitled to interest after the 18th September, 1932. As the contract has been reduced to writing, no evidence is admissible to contradict, vary, add to, or subtract from its terms.

I have therefore to interpret the document as it stands. A charge in similar words fell to be interpreted by the Court of Appeal in the Federated Malay States in *K. Arumugam* v. *J. K. R. Leonard*, (5 M.L.J. p. 252): the Court held that interest was not payable after the date specified for the repayment of the principal, on the ground that the stipulation to pay interest was governed by the words " for the better securing to the said Chargee the repayment in manner aforesaid of the principal sum and interest " and that " repayment in manner aforesaid " meant payment up to and on the date on which the principal was to be repaid. I respectfully agree with that interpretation.

I hold that in the terms of the written contract there is no clear stipulation to pay interest after the 18th September, 1932, and therefore the defendant is not liable to pay it.

The second point for decision is whether the plaintiff is entitled to recover compensation for breach of contract, since the defendant has broken his contract to repay the principal sum on the 18th September, 1932. Section 73 of the Contract Enactment reads as follows:—

"(i) When the contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

(ii) Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

(iii) When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract."

And illustration (n) reads:—

"(n) A. contracts to pay a sum of money to B. on a day specified. A. does not pay the money on that day. B., in consequence of not receiving the money on that day, is unable to pay his debts and is totally ruined. A. is not liable to make good to B. anything except the principal sum he contracted to pay, together with interest up to the day of payment."

As I understand this section, it declares two things. First, it declares that the party who suffers by a breach of contract shall be entitled to receive compensation for loss or damage caused to him by the breach. Secondly, it defines the loss or damage for which compensation is recoverable: i.e. on the one hand, it is recoverable for any loss or damage which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it; but, on the other hand, it is not recoverable for any remote and indirect loss or damage sustained by reason of the breach.

Illustration (n), in my opinion, is intended to illustrate the above propositions: I think that it purports to state, in effect, that A. has broken his contract to repay on a day specified; that B. has suffered loss by the breach of contract; that B. is entitled to receive compensation, assessed as interest, because B's inability to earn interest on the money is loss or damage which naturally arose in the usual course of things from the breach, or because the parties knew, when they made the contract, that this loss or damage was likely to result from the breach of it; finally, that B. is not entitled to receive any greater compensation (over and above such interest) on account of the fact that the breach has caused his ruin, because his ruin is only remote and indirect loss or damage.

That appears to me to be the natural and probable interpretation of the Section and Illustration, and I must therefore adopt it.

I hold, accordingly, that by virtue of Section 73, the plaintiff in the present case is entitled to receive compensation as interest.

I may add that a similar interpretation of Section 73 has been adopted by the High Court of Calcutta: interest has also been allowed by the High Court of Allahabad, though refused by the High Courts of Madras and the Punjab. Cf. *Pollock and Mulla.* Indian Contract and Specific Relief Acts. (6th edition) pp. 416, and 429—431.

Interest has also been allowed by the Court of Appeal in the Federated Malay States: cf. *K. Arumugam* v. *J. K. R. Leonard*, 5 Malayan Law Journal p. 252.

I should be confirmed in my interpretation of Section 73 if I could regard the decisions above referred to as authorities, but I consider it would be unsafe to do this in case the *ratio decidendi* in England, India, or the Federated Malay States was based on a rule of law not applicable in Johore: for instance, the Court in the Federated Malay States relied on the Indian case of *Chajmal Das* v. *Brij Bhukan Lal* (17 Allahabad p. 511) and on the English case of *Price* v. *The Great Western Railway* (153 English Reports p. 1179): in neither case does the judgment state unequivocally what rule of law is relied upon; indeed the English case appears to have been decided on the basis that a mortgage deed shows the intention of the parties to have been that it should be a debt bearing interest; that basis does not exist in the present case: moreover, whereas the Courts Enactment of the Federated Malay States in Section 49 (ii) (l) gives the Court jurisdiction to direct interest to be paid on debts, no similar jurisdiction is given by the Courts Enactment of Johore.

The third point for decision is whether loss of interest constitutes loss or damage.

Counsel for the defendant, quoting Banerjee J. in *Surja Narain* v. *Pratab Narain* (26 Calcutta p. 955) submitted that as a matter of principle compensation is recoverable only where actual loss has been proved as where the creditor has been compelled to borrow money at interest from others on default of payment by the debtor, and that compensation is not recoverable where there has been no actual loss but only a failure to realize anticipated profits.

I cannot accept that statement of principle: if it were correct, the Court would never be able to award compensation for loss of profits, whereas such cases as *Simpson* v. *L. & N. W. R. Co.*, (1876) 1 Q.B.D. 274 and *Hydraulic Engineering Co.* v. *McHaffie*, (1878) 4 Q.B. Div. 670, show that in certain circumstances the Court can and does award compensation for loss of profit. Apart from authority, however, I interpret Section 73 and Illustration (n) as expressly stating that compensation as interest is recoverable where money has been wrongly with-held.

The fourth point for decision is, what rate of interest should be allowed?

In the case of *Chajmal Das* v. *Brij Bhukan Lal* (*ubi supra*), the Privy Council stated "the rate would *prima facie* be the same as that provided by the bond during the two years, although there is no rule of law making that rate necessarily the measure of the damages."

On the evidence given by the plaintiff and defendant in the present case, I should not feel justified in reducing what the Privy Council has held to be the *prima facie* rate: but Section 3 (vii) of the Usurious Loans Enactment now directs the Court to presume that in certain cases the interest charged is excessive and the transaction substantially unfair: however, I find it to be proved in the present case that 15% is not excessive and the transaction not unfair: I therefore allow interest at 15% per annum.

I give judgment for the plaintiff for

(a) the principal sum of $4,000,
(b) the sum of $260 being interest due and unpaid up to the 18th September, 1932, at 15% per annum,
(c) compensation as interest assessed at 15% per annum on $4,000 from the 19th September, 1932, to the date when this judgment is signed.

As the plaintiff is wholly successful in his claim, I see no reason why the defendant should not pay the costs of this suit: I therefore make a conditional order that the defendant shall pay the costs, but this order is to remain inoperative for 14 days after this judgment is read. and if within that time the defendant notifies the Registrar that he wishes to argue the question of costs, the Registrar is to set down the case for argument accordingly.

Judgment Accordingly.

Solicitors for the Plaintiff—*S. C. Goho & Co.*
Solicitors for the Defendant—*Allen & Gledhill.*